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Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Dominica*

The present report is a summary of 6 stakeholders' submissions[1] to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

* The present document was not edited before being sent to United Nations translation services.

Information provided by other stakeholders

A. Background and framework

1. Scope of international obligations

1. Amnesty International (AI) called on the ratification and implementation of key international human rights standards, including the Convention against Torture and other Cruel, inhuman or Degrading Punishment and its Optional Protocol and the Convention on the Elimination of All Forms of Racial Discrimination (with technical and financial support of the United Nations and Inter-American systems as necessary). AI additionally recommended Dominica to ratify and implement the Inter-American Convention to Prevent and Punish Torture; sign and ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, and the Inter-American Convention against All Forms of Discrimination and Intolerance Discrimination (with technical and financial support of the UN and Inter-American systems as necessary).[2]

2. AI recalled that Dominica committed to signing and ratifying a number of international human rights treaties during its first Universal Periodic Review (UPR) in December 2009. It noted that the country has ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. However, Dominica has failed to ratify a number of other Conventions, despite having committed to do so within three months during its UPR review. Dominica committed to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.[3] AI recommended ratifying also the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[4]

2. Constitutional and legislative framework

3. Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment of children is lawful and recommended that legislation is enacted in Dominica to explicitly prohibit corporal punishment of children in all settings, including at home, as a matter of priority.[5]

4. Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1) recommended to Dominica to take all necessary measures to enact new legislation in order to protect and guarantee the enjoyment of fundamental human rights to LGBT people in all the spheres of their lives, according to international standards.[6] AI regretted that during the previous review, Dominica also rejected a recommendation to repeal those legal provisions which criminalize sexual relations between consenting adults of the same sex and decriminalize sexual activities between consenting adults of the same sex. JS1 recommended the government of Dominica to establish anti-discrimination laws and regulations to ensure that LGBT individuals and other populations, such as people living with HIV, enjoy equal rights.[7]

3. Institutional and human rights infrastructure and policy measures

5. Edmund Rice International (ERI) noted that the government of Dominica has accepted 10 recommendations in the first cycle of the UPR concerning the rights of the child. Yet recent evidence suggested that many of these recommendations have not been fully implemented, and the rights of the child in Dominica are still routinely violated. ERI recommended developing and supporting consultative mechanisms, including the existing ones, whereby children and young people can communicate to the government their concerns and make suggestions concerning their rights and how to better promote and protect them.[8]

6. ERI recommended Dominica to develop, in consultation with children and young people, a comprehensive child protection policy and national plan of action, including training for relevant personnel, a public education campaign on Child Protection, and an adequate number of Child Protection Units in major centres.[9]

B. Cooperation with human rights mechanisms

Cooperation with special procedures

7. ERI recommended Dominica to invite the Special Rapporteur on violence against women, its causes and consequences to visit the country.[10]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

8. JS1 noted that although the Constitution expressly proscribes discrimination on the basis of "sex, race, place of origin, political opinions, colour or creed", Caribbean courts have treated this provision as a closed list and have been reluctant to extend the list in order to recognise other categories of discrimination such as gender, sexual orientation or gender identity.[11] ERI recommended incorporating gender equality issues in the school curriculum and establish and support programmes that train children and young people to analyse and change traditional and cultural stereotypes about gender roles.[12]

9. AI observed that consensual same-sex conduct is criminalized in Dominica. Under Article 16 of the Sexual Offences Act 1998 any person who commits "buggery" is liable to 10 years' imprisonment. Furthermore, the court may order the convicted person to be admitted to a psychiatric hospital for treatment. At the UPR Working Group in December 2009, the Dominican delegation acknowledged that existing legislation in this regard was "discriminatory" and that there was a "certain element of discrimination in the society towards same sex relationships". However, at the 13th session of the Human Rights Council in March 2010, Dominica stated that it was not prepared to decriminalize sexual relations between consenting adults of the same sex. In May 2013, the Dominican Prime Minister reiterated the government's refusal to repeal this legislation and stated that no "compelling argument can be made for it to be repealed".[13] JS1 recommended the implementation of legislation and policies to address the needs of LGBT people -like a gender policy and an employment policy- and ensure that legal assistance and psychological support are provided to those who have encountered stigma, discrimination and various types of bullying.[14] The Inter-American Commission on Human Rights

(IACHR) stated that there are laws criminalizing behaviour based on non-heterosexual orientation in Dominica.[15]

10. JS1 recommended training law enforcement officers in order to be sensitized to the fact that LGBT people are to be treated with dignity and are due their equal rights. It has recommended undertaking an investigation on the status of the LGBT community in Dominica.[16]

11. AI is also concerned by recent reports of police in Dominica using this legislation to charge individuals with "buggery", although it appears that in all cases the charges were subsequently dropped. The organization is also concerned by the precedent set by the Eastern Caribbean Court of Appeal in 2009, in the case of Clem Philbert v the State, where a murder conviction was quashed because the victim was considered to have made "unnatural advances" towards the accused leading to a situation of "justifiable homicide". In a murder trial in September 2012, the Director of Public Prosecution reportedly informed the court that he was discontinuing proceedings against the accused based on the above decision by the Eastern Caribbean Court of Appeal. AI recommended that Dominica acknowledge that LGBT persons are at risk of greater discrimination, prejudice and violence because of the existence of laws criminalizing consensual same-sex activity and to repeal all provisions that criminalize same sex relations, including in the Sexual Offences Act.[17]

2. Right to life, liberty and security of the person

12. IACHR noted that within the context of mandatory death penalty, courts of national jurisdiction have found the mandatory death penalty to be unconstitutional in Dominica (Balson v. The State).[18]

13. AI noted that despite rejecting recommendations to abolish the death penalty, Dominica accepted a recommendation to "consider a moratorium on the imposition of the death penalty, as a step towards completely abolishing it". Dominica acknowledged there had been a self-imposed moratorium on the use of the death penalty since 1986 (the last execution been carried out in 1986); however, it maintained the death penalty in its legislation. The crimes which are punishable by death in Dominica are murder (Offences Against the Person Act, Article 2) and treason (Treason Act, Article 2).[19]

14. AI observed that there is currently no one on death row and nobody has been sentenced to death in recent years. Having voted against the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly in 2007 and 2008, Dominica abstained in the December 2010 vote. However, regrettably it reverted to voting against the resolution in December 2012. Dominica stated that "there was a popular sentiment in the country in favor of reinstating executions for persons convicted of murder" and that "as a democratically elected Government, elected by the people to represent the people, the laws it would submit to the Parliament should, to the extent possible, reflect the sentiments and desires of the people". AI recommended establishing a formal moratorium on executions with a view to abolishing the death penalty, as provided by four UN General Assembly resolutions adopted since December 2007, including most recently resolution 67/176 of 20 December 2012.[20]

15. Child Rights International Network (CRIN) observed that during the first cycle of the Universal Periodic Review in 2009, Dominica rejected recommendations to prohibit

corporal punishment of children, stating that it was "not applied arbitrarily, and was seen as a measure of last resort" and that it was not prepared to remove corporal punishment from its statute books. High Court Judges are empowered to order that a boy under the age of 14 who has been convicted of an offence "be as soon as practicable privately whipped", in lieu of or in addition to any other punishment. The High Court may pass a sentence of corporal punishment on any male convicted to rape, sexual intercourse with a girl under 14, or attempting or aiding these offences. The Children and Young Persons Act does not specifically mention corporal punishment as a way of dealing with juvenile offenders, but refers to the Magistrate's Code of Procedure Act, which allows a magistrate to order the "private whipping" of a male under 18. The Offences Against the Person Act also provides for "private whipping".[21]

16. CRIN and GIEACPC hoped that the UPR Working Group will note with concern the legality of corporal punishment in Dominica during the review in 2014 and to explicitly prohibit sentences of corporal punishment and life imprisonment, under all systems of justice and without exception to ensure full compliance with international standards.[22] GIEACPC stated that the persisting legality of corporal punishment of children in Dominica – in the home, schools, penal system and care settings – is a serious violation of children's rights. They noted that the Government rejected the recommendations, describing the law in relation to school corporal punishment and stating that there was no intention to reform the law.[23]

17. ERI observed that recent community intervention programmes by UN Women in Dominica[1] have highlighted high rates of gender-based violence and fatherless families.[24]

3. Administration of justice, including impunity, and the rule of law

18. IACHR observed that in Dominica, the minimum age at which one can be held criminally responsible is 12 years.[25] CRIN called for raising the minimum age of criminal responsibility.[26]

19. CRIN noted that in Dominica, sentences of life imprisonment and corporal punishment are lawful for persons who were under the age of 18 at the time they committed a criminal offence. The Corporal Punishment Act defines a child as under 16. The Children and Young Persons Act (CYPA) defines a child as under 14, a juvenile as under 18, and a young person as aged 14 to 17. The CYPA also specifies the minimum age of criminal responsibility as 12. Persons convicted of offences committed while they were under 18 may be sentenced to life imprisonment. In prohibiting the death penalty for persons under 18, section 3 of the Offences Against the Person Act requires that in lieu of the death penalty, children are sentenced to detention "during the State's pleasure". The Government has stated that it is possible for such persons to be sentenced to life imprisonment without the possibility of release. A child under 14 cannot be sentenced to prison, but 14 to 17 year-olds can. CRIN was not able to establish whether there are exceptions to this restriction.[27]

20. GIEACPC observed that the penal system – as in the 1881 Juvenile Offenders' Punishment Act provides for any High Court Judge to order a boy under 14 who has been convicted of any offence "to be as soon as practicable privately whipped", in lieu of or in addition to any other punishment. Under the 1987 Corporal Punishment Act, a court may sentence a boy under 16, convicted of any offence, to corporal punishment in lieu of or in

[1] http://www.unwomen.org/en/news/stories/2012/11/in-dominica-a-violence-prevention-programme-helps-boys-overcome-gender-stereotypes/ Accessed Sep 5, 2013.

addition to any other punishment. If the sentence is passed by a Magistrate's Court, it must be confirmed in the High Court before being carried out. The 1961 Magistrate's Code of Procedure Act allows a magistrate to order the "private whipping" of a male child or young person. The 1873 Offences Against the Person Act also provides for "private whipping". Under the 1970 Children and Young Persons Act, a juvenile in conflict with the law may be detained in a government training school or a prison. The 1877 Prisons Act and the 1956 Prison Rules allow visiting justices to order corporal punishment for breaches of discipline. GIEACPC recommended the prohibition of corporal punishment during the review of Dominica.[28]

21. CRIN called on for providing disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.[29]

22. IACHR was concerned at reports received which show that children can be held for an indefinite period in detention, and that review is not required. This can amount to a sentence of life imprisonment without the possibility of parole. For example, the Commission was told that in Dominica, a child can be locked up for an indefinite period of

time, at the discretion of the Governor-General and President, respectively.[30]

4. Right to privacy, marriage and family life

23. JS1 noted that the Court has discretionary powers to order that a person convicted of buggery be admitted to a psychiatric hospital for treatment.[31] JS1 reported that the 1998 Sexual Offences Act creates an offence of gross indecency (section 14), which, for the first time, criminalises sexual acts between females as well as between males. It noted that same sex sexual acts are punishable by imprisonment under the Sexual Offences Act of Dominica. JS1 recommended the government of Dominica to repeal those legal provisions on sexual offences which criminalize sexual relations between consenting adults of the same sex and decriminalize sexual activities between consenting adults of the same sex immediately.[32]

24. JS1 observed that Dominica does not recognise stable civil unions between same-sex couples, and some laws deprive unmarried same sex couples of same benefits awarded to persons in opposite sex relationships, even if unmarried. This circumstance prevents same-sex couples from enjoying a whole range of marriage benefits and rights.[33] Although nothing in the Marriage Act Cap 35:01 specifically denies homosexuals the right to marry, the fact that its sections are phrased in heterosexual terms denies them the benefits.[34] JS1 also recommended the government of Dominica to amend the Marriage Act allowing same-sex marriage or domestic partnerships laws in order to protect the rights to marry and to found families for LGBT people.[35]

5. Freedom of religion or belief, expression, association and peaceful assembly

25. JS1 stated that LGBT human rights defender groups in Dominica are forced to operate underground because of fear that their members will be victimised. Those who are openly gay complain of acts of physical abuse and are often victims of vandalism committed against their positions, as well as being expelled from home. Reports made to the police are not taken seriously and the victims are sometimes ridiculed. Through the systematic encouragement of discrimination on the basis of sexual orientation, the State has

deprived individuals of their right to freedom of expression and freedom of association. JS1 recommended the government of Dominica to establish policies and regulations for LGBT human rights defenders and NGOs that protect them from discrimination and persecution.[36]

26. IACHR was disturbed that one of the most serious problems when defending the rights of LGTBI persons is that any sexual orientation other than heterosexual continues to be criminalized as offenses labelled "sodomy" (or "buggery"), "gross indecency", "unnatural crimes" and so on. The Commission observes that the right of association for purposes of promoting and defending the rights of LGTBI persons are prohibited, the argument being that their organizations and activities are "illegal." There are laws criminalizing behaviour based on non-heterosexual orientation in Dominica.[37]

6. Right to work and to just and favourable conditions of work

27. ERI stated that an overall unemployment rate is 23%.[38]

7. Right to social security and to an adequate standard of living

28. ERI stated that 29% of Dominica's population is below the poverty line (2009 estimate). Poverty impacts on the exercise of many human rights, including in this case the right of children to a family of origin (having two resident parents). ERI recommended the implementation of a Poverty Eradication Programme targeting women, children and those in vulnerable groups and protecting their right to social protection.[39]

8. Right to health

29. JS1 reported that the State has not implemented any HIV/AIDS prevention programme specifically aimed at men who have sex with men despite the AIDS epidemic plaguing the Caribbean. Discrimination only serves to exclude individuals and promote risky behavior. JS1 recommended the government of Dominica to develop a sexual health programme and ensure the enjoyment of the right to health of LGBT people by enacting adequate legislation and by implementing a national health plan taking care of all the health needs of this community as well as strategies and programs to change health care providers' attitudes toward men who have sex with men and LGBT patients, especially in public health centres, and to train them in non-discrimination skills.[40]

9. Right to education

30. ERI recommended Dominica to provide adequate vocational and technical education opportunities at the secondary level, with a focus on local employment needs. ERI also recommended Dominica to ensure that the education system monitors school attendance and develops programmes to increase attendance rates, to achieve universal primary and secondary education outcomes.[41]

10. Persons with disabilities

31. ERI recommended Dominica to provide an inclusive education for all children with disabilities, including specialised centres for assessment and support, as needed.[42]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society:

Individual submissions:

AI	Amnesty International, London, United Kingdom of Great Britain and Northern Ireland;
CRIN	Child Rights International Network, London, United Kingdom of Great Britain and Northern Ireland;
ERI	Edmund Rice International, Geneva, Switzerland;
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, United Kingdom of Great Britain and Northern Ireland.

Joint Submission:

JS1	Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative, Dominica.

Regional intergovernmental organization (s):

IACHR	The Inter-American Commission On Human Rights.

[2] Amnesty International P. 1, 2.
[3] Amnesty International P. 1.
[4] Amnesty International P. 1, 2 and 3.
[5] Global Initiative to End All Corporal Punishment of Children (GIEACPC), p.1.
[6] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.2.
[7] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.4.
[8] Edmund Rice International p. 1.
[9] Edmund Rice International p. 3.
[10] Edmund Rice International p. 3.
[11] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.1.
[12] Edmund Rice International p. 2.
[13] Amnesty International P. 1, 2 and 3.
[14] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.4.
[15] IACHR second report on the situation of human rights defenders in the Americas, para. 334.
[16] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.4.
[17] Amnesty International P. 1, 2 and 3.
[18] IACHR, The Death Penalty in the Inter-American Human Rights System; From Restrictions to Abolition, para. 27.
[19] Amnesty International P. 1, 2 and 3.
[20] Amnesty International P. 1, 2 and 3.
[21] CRIN p. 1, 4.
[22] CRIN p. 1, 4 and Global Initiative to End All Corporal Punishment of Children (GIEACPC), p.1-3.
[23] Global Initiative to End All Corporal Punishment of Children (GIEACPC), p.1-3.
[24] Edmund Rice International p. 1, 2.
[25] IACHR Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 78, 13 July 2011, para. 48.
[26] CRIN p. 4.
[27] CRIN p. 1, 2.
[28] Global Initiative to End All Corporal Punishment of Children (GIEACPC), p.1-3.
[29] CRIN p. 4.
[30] IACHR Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 78, 13 July 2011, para. 368.
[31] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.1.
[32] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.2.
[33] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.2.
[34] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.3.
[35] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.3.
[36] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.4.

[37] IACHR second report on the situation of human rights defenders in the Americas, para. 334.
[38] Edmund Rice International p. 1, 2.
[39] Edmund Rice International p. 1, 2.
[40] Minority Rights Dominica (MiRiDom) and Sexual Rights Initiative (JS1), p.4.
[41] Edmund Rice International p. 2.
[42] Edmund Rice International p. 2.